

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By **VICE CHAIRMAN RICK DALE**, on March 5, 2001 at 3:20 A.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Rick Dale, Vice Chairman (R)
Rep. Gail Gutsche, Vice Chairman (D)
Rep. Keith Bales (R)
Rep. Rod Bitney (R)
Rep. Dee Brown (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Larry Cyr (D)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Rick Laible (R)
Rep. Jeff Laszloffy (R)
Rep. Bob Story (R)
Rep. Brett Tramelli (D)
Rep. David Wanzenried (D)

Members Excused: None.

Members Absent: Rep. Cindy Younkin, Chairman (R)
Rep. Douglas Mood (R)

Staff Present: Holly Jordan, Committee Secretary
Larry Mitchell, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 31, 2/19/2001; SB 103,
2/19/2001; SB 159, 2/19/2001
Executive Action: SB 103

HEARING ON SB 159

Sponsor: SEN. LORENTS GROSFIELD, SD 13, Big Timber

Proponents: Bud Clinch, DNRC

Paul Sihler, Montana Fish, Wildlife & Parks

Janet Ellis, Montana Audubon

Opponents: None.

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 0.7}

SEN. LORENTS GROSFIELD, SD 13, Big Timber, stated this is a small bill that adds a tool that can be used regarding state lands. It allows the Board of Land Commissioners to grant easements for certain purposes in certain cases. He gave an example of when the department may use this. Another purpose of the bill has to do with some ranches the Department of Fish, Wildlife and Parks owns. In some cases those ranches have state lands in the middle of them. How can the DFWP insure that the use of that land remains compatible with the wildlife management area purpose of the surrounding land? Especially, how does that remain compatible in the face of something like oil and gas leasing or other kinds of development? DNRC is required to get profit off that land for purpose of funding the schools. SB 159 gives DFWP a way to acquire an easement for conservation purposes. They would not be buying the land, just the easement. There are only a few cases where this will be useful but it is a needed tool.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 5.4}

Bud Clinch, DNRC, stated, this bill does two things. It gives the department the ability to issue easements in response to situations where there is an encroachment onto state land. He gave an example. Also, an easement can be sold to DFWP at full market value. The bill furthers the conservation purposes of DFWP. This is the best way to solve any current problems regarding these properties owned by DFWP. This fulfills the trust land mandate as well as provides the opportunity for DFWP to be assured that their mission can be met. In developing, selling and purchasing conservation easements each one is quite different. Each particular situation will bring with it a certain set of circumstances. Through negotiations a price will be determined for full market value.

Paul Sihler, Montana Fish, Wildlife & Parks, submitted written testimony **EXHIBIT**(nah50a01).

Janet Ellis, Montana Audubon, asked the committee to hold off on executive action of SB 159 as she is working on an amendment. Montana Audubon does support the bill in it's current form but had some concerns they will put in amendment form. **Ms. Ellis** spoke briefly about those concerns.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 15.7}

REP. BROWN asked **SEN. GROSFIELD**, regarding line 21, is telegraph outdated language? **SEN. GROSFIELD** stated, the railroads have telegraph lines but he doesn't know if they are used. **REP. BROWN** asked **SEN. GROSFIELD** if he would have a problem with the committee eliminating that language. **SEN. GROSFIELD** stated no. **REP. BROWN** asked, since this involves the selling of property, is there any language about money in the bill. **SEN. GROSFIELD** stated it's not in 77-2-101 but it is in title 77 that the board cannot give up an interest in state lands without full market value. **REP. BROWN** asked if there is a fine involved in someone building a septic system or their home on state land besides the state's willingness to give up that property. Is a fine included in that section? **SEN. GROSFIELD** stated he does not know. **REP. BROWN** redirected the question to **Mr. Clinch** who stated that there is a policy within the Board of Land Commissioners to assess a penalty up to three times the appraised value.

REP. HURDLE asked **Mr. Clinch** if state agencies can own land is that not state land? **Mr. Clinch** stated that is correct. **REP. HURDLE** asked **Mr. Clinch** what does the deed say, does it say that it is owned by the department or the state? **Mr. Clinch** stated that varies from land to land. This bill specifically talks about school trust lands. Those deeds reference the State of Montana and say that the lands shall be managed for the generation of revenue. **REP. HURDLE** asked if FWP owns lands which are not considered to be state lands. **Mr. Clinch** stated FWP owns lands in their own right and they are considered state lands. This bill is specifically talking about school trust lands. **REP. HURDLE** asked what the deed says on the FWP lands, are they state lands or do they belong to the agency? **Mr. Clinch** stated the deed probably says the State of Montana and further references FWP. **REP. HURDLE** asked where the money came from when FWP purchased those lands. **Mr. Clinch** stated the revenue probably

came from a variety of sources. **REP. HURDLE** asked, if a state agency can own land and sell it to another state agency who pays for it? **Mr. Clinch** stated the money comes from various revenue sources.

REP. HARRIS asked **Mr. Clinch** if there is a constitutional issue here in trading these lands. **Mr. Clinch** stated that has been reviewed. DNRC already has the authority to grant easements for a wide variety of things. He gave an example. **REP. HARRIS** stated, the constitution says that you must get the full market value when you sell school trust. When the money you are getting is from the government are you really getting full market value? **Mr. Clinch** stated, the concept of full market value has nothing to do with who's pocket you are taking it out of. It has to do with what rights you are transferring and what is the current value of those in the market place. There has never been a constitutional issue regarding this practice.

REP. STORY asked **Mr. Clinch**, regarding lines 15 and 16, why did they take out environmental control purposes? **Mr. Clinch** stated that language was proposed language. There is another provision in existing statute that allows DNRC to do what that language would have done. It would be unnecessary to include that language in this bill.

REP. LAIBLE asked **Mr. Clinch** if we are actually selling school trust land at full market value or are we granting an easement for that land. **Mr. Clinch** stated that we are granting an easement or lease. The board doesn't usually allow selling of state land. He gave some examples. This bill would allow DNRC to sell FWP a restriction on DNRC's development rights.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 33.9}

SEN. GROSFIELD stated these lands are purchased with federal excise tax money. This bill is a small tool to be used. He asked the committee to hold off on executive action to work on the amendment. He asked for a do concur.

HEARING ON SB 31

Sponsor: **SEN. DALE BERRY, SD 30, Hamilton**

Proponents: **Bud Clinch, DNRC**

Scott Odegard, Montana Electric Co-ops

Bob Fouhy, Northern Electric Co-op

Geoff Feiss, Montana Telecommunications Association
Gary Wiens, Montana Electric Co-ops Association
Rie Brown, Montana Electric Co-ops Association
David Wheelihan, Montana Electric Co-ops Association

Opponents: Roger Jergeson, self, Chinook

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 37.6}

SEN. DALE BERRY, SD 30, Hamilton, stated, this bill has to do with receiving optimum value out of state lands. It is a result of rulings in the case of *MonTrust v. State of Montana*. He stated that there was a drafting error in the bill where 1977 was put in instead of 1997. The bill establishes values based on 1997 evaluations. It also addresses utility easements.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 40.3}

Bud Clinch, DNRC, stated this bill emanates from some Supreme Court decisions that occurred a year or more ago as a result of a series of lawsuits that were filed against DNRC by MonTrust. **Mr. Clinch** gave a summary of what happened during the court case leading up to this bill. He then explained the different sections in the bill. He stated this bill cleans up provisions that were found to be unconstitutional in terms of not receiving full market value on school trust lands. Additionally it broadens the issuance of historic rights-of-way to include the applicability for utility corridors.

Scott Odegard, Montana Electric Co-ops, submitted written testimony **EXHIBIT**(nah50a02).

Bob Fouhy, Northern Electric Co-op, submitted written testimony **EXHIBIT**(nah50a03).

Geoff Feiss, Montana Telecommunications Association, stated, this bill is important to the Telecommunications industry. It will help them satisfy the constitution and address the historic easement issue. He asked for a do concur.

Opponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 52}

Roger Jergeson, self, Chinook, stated he has three separate state leases. One of those has a predicament of a driveway. He has been trying to get an easement across the state land for his driveway. He submitted two letters to the committee **EXHIBIT(nah50a04)** and **EXHIBIT(nah50a05)**. He also submitted the Private Driveway Policy from 1995 **EXHIBIT(nah50a06)** and an Application For Right Of Way Easement In State Lands **EXHIBIT(nah50a07)**. He went over the problems he has had trying to get an easement. *{Tape : 1; Side : B; Approx. Time Counter : 0.1}* He stated it is a waste of time to keep revisiting these issues.

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 1.2}

REP. HARRIS asked **Mr. Clinch**, if you wanted to extract as much money as possible for the historic electrical rights-of-way, in the absence of this legislation how much could you gather? **Mr. Clinch** stated DNRC will extract as much as they can. This bill will cut down their easements to what they need instead of an oversized parcel of land. The co-ops may not pay for a large piece of land when they only need a small strip. **REP. HARRIS** stated this is talking about historic, existing easements. On various documents it is indicated that there is about a 60 foot easement. If they ever were to say they are entitled to a 60 foot easement they could prove it in the deeds. If that is true and they have not paid fair market value for it, how much could you extract for those easements? **Mr. Clinch** stated, on a new project, say a utility corridor, depending on why kind of utility corridor that was, in addition to the impact of installing that power line you have the impact involved with the construction, etc. Typically, in terms of new power line construction, right-of-way requirements could be somewhere between 30 - 60 feet. This bill deals with historic rights-of-way so there is no concern of the impact to the land now. That's why DNRC thinks to resolve this issue the department can use it's discretion and narrow those corridors. That is where the date of 1997 comes into play. **REP. HARRIS** stated he is missing the point of his question. If the electric companies were entitled to that 60 foot easement and you want to extract, for the historic use, perhaps up to the statute of limitations, are we talking about a lot of money or what is the money value here? **Mr. Clinch** stated there isn't any entitlement here, they aren't entitled to a specific thing. The width of the right-of-way is made at the discretion of the department based on what is necessary. Generally DNRC likes to keep those as small as possible. If DNRC were to try to instill a practice where parcels had to be a certain size the co-ops would probably not purchase the land.

This bill recognizes the minimal impact that exists out there from the fact that these lines have already been installed. It will allow DNRC to apply it's discretion to establishing a reasonable width right-of-way for these corridors but make it minimal so the utilities are encouraged to secure those.

REP. STORY stated this issue has been kicked around in the session since 1997. It was brought about because some people had to cross state land to get to land they owned. All of the sudden these people found out that they couldn't sell their property or get loans to improve their property because they didn't have a written easement. He asked **Mr. Clinch** if that is where this bill started out. **Mr. Clinch** stated yes. The situation has to do with people that have private property with access only by state lands. In trying to sell this property and doing the title search they found that there was no bonafide easement to that property. In trying to gain an easement they became frustrated with all of the steps they had to go through. He then gave a history of the bill.

REP. DALE asked **Mr. Clinch** if he would be willing to come back for executive action on SB 31 as time was running short. **Mr. Clinch** stated yes.

Mr. Clinch wanted to clarify easements are initiated by the applicant. DNRC is not forcing people to apply for easements. DNRC is advising landowners that it may be in their best interest to secure an easement.

REP. HURDLE stated that utility right-of-way is an extremely important issue and questions should not be limited in any way.

REP. DALE stated the committee will have the chance to ask questions of **Mr. Clinch** during executive action. **REP. DALE** ruled, in the interest of time, those question for **Mr. Clinch** will be postponed until executive action.

REP. BROWN asked **Mr. Jergeson** if he stated he is not opposed to paying for the property that would be considered right-of-way but is opposed to having to do a survey since it is not in statute. **Mr. Jergeson** stated the way he reads 77-1-130 it says the landowner has the right to waive survey requirements. A survey could cost up to \$2,500 and he could not afford that. **REP. BROWN** asked, you wouldn't object to paying for the easement but you have a problem having to pay for that survey? **Mr. Jergeson** stated, that is correct.

REP. HURDLE asked **Mr. Odegard**, if The Sun River Electric Co-op receives an easement could it share that easement with other

utilities? **Mr. Odegard** stated yes, the easements are not exclusive. You could have several utilities in a 60 foot easement. This would shrink the easement down to the very minimum possible. **REP. HURDLE** stated, many utilities can be within one cable. Would Sun River Electric Co-op be able to share the easement in that way and benefit from it financially. **Mr. Odegard** stated, that's not an unusual practice to actually stack different facilities in the same easement. It is normally done in a urban area as it is more expensive to stack them than to just let them spread out. **REP. HURDLE** stated, the point is, Sun River Electric Co-op would be able to sell their share of that right-of-way to another co-op, correct? **Mr. Odegard** stated no. The easement is not exclusive and the co-op does not have the right to sell an easement.

REP. HARRIS asked **Mr. Fouhy** what his full market value estimate is. **Mr. Fouhy** stated that it is impossible to figure that out right down to the dollar. It would be somewhere in the neighborhood of \$160,000 - \$200,000. **REP. HARRIS** asked if any of these easements are in writing. **Mr. Fouhy** stated no.

REP. STORY asked **Mr. Clinch**, regarding the issue of reciprocal easements done in 1999, wasn't the purpose of that bill that if the state wanted an easement across private land to get to a state section that they could trade those easements out, is that how that was supposed to work? **Mr. Clinch** stated that is correct. **REP. STORY**, in **Mr. Jergeson's** case, could there be an arrangement made to trade easements? **Mr. Clinch** stated, in theory that is correct. **REP. STORY** asked if you were building a long road that was going through private, federal and state land, would you only have to apply a MEPA study to the section in the state land? **Mr. Clinch** stated that is correct. He gave an example why that exemption is made.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 26.9}

SEN. BERRY stated this bill will clean up old legislation. It will help **Mr. Jergeson** and others like him to identify what their problem is and to work with DNRC towards a solution. He asked for a do concur.

HEARING ON SB 103

Sponsor: SEN. TOM ZOOK, SD 2, Miles City

Proponents: Bud Clinch, DNRC

Opponents: None.

Opening Statement by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 28.3}

SEN. TOM ZOOK, SD 2, Miles City, stated this is a very simple bill. It cleans up a statute regarding recreational fines and forfeitures.

Proponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 29.1}

Bud Clinch, DNRC, stated this is simply a cleanup measure following a bill that was passed in 1999. That bill directed all fines and penalties to go to the general fund not to go into any state special revenue accounts. SB 103 bill says, if the department collects fines and penalties from recreationists or from lessees those revenues are deposited into the general fund. He asked for a do concur.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 30.9}

REP. HARRIS asked **Mr. Clinch** when all of the defined revenue is taken out of the account what will be left in the account? Is it worth managing or is it too small to matter? **Mr. Clinch** stated the license fees go into that account and those revenues are utilized by DNRC to pay for the program. Therefore, the account is a necessity.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 32.6}

SEN. ZOOK closed.

EXECUTIVE ACTION ON SB 103

{Tape : 1; Side : B; Approx. Time Counter : 33}

Motion/Vote: **REP. YOUNKIN** moved that **SB 103 BE CONCURRED IN.**
Motion carried unanimously.

ADJOURNMENT

Adjournment: 4:55 P.M.

REP. CINDY YOUNKIN, Chairman

HOLLY JORDAN, Secretary

CY/HJ

EXHIBIT (nah50aad)